



General Assembly

Distr.: General
7 June 2012

English only

Human Rights Council

Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Jammu and Kashmir**

A legitimate state is one that adequately protects its constituent's human rights and respects the human rights of all others. The right to rule free of external interference – to the ability and willingness of its people in the State of Jammu and Kashmir to perform the requisite functions by establishing and maintaining institutions that would have satisfactorily protected and respected human rights was threatened in October 1947. Government of Kashmir made a reference to the Government of India (Governor General) for help and a military help was despatched to protect 'life', 'honour' and 'property' in the State. The arrangement is interim and provisional.

Government of India made a complaint to the UN Security Council on 01 January 1948 and in para 6 of the complaint made under article 35 of UN Charter it stated, "The grave threat to the life and property of innocent people in the Kashmir Valley and to the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the Valley demanded immediate decision by the Government of India on both the requests. It was imperative on account of the emergency that the responsibility for the defence of the Jammu and Kashmir State should be taken over by a Government capable of discharging it. But, in order to avoid any possible suggestion that India had utilised the State's immediate peril for her own political advantage, the Government of India made it clear that once the soil of the State had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognized democratic method of a plebiscite or referendum which, in order to ensure complete impartiality might be held under international auspices."

From 1 January 1948 (S/628) the people of the State of Jammu and Kashmir remain a subject of the principle of equality and right of self-determination under article 1 (2) of UN Charter and article 1 (i) of The International Covenant on Civil and Political Rights (ICCPR) and article 1 (i) of The International Covenant on Economic, Social and Cultural Rights (ICES) respectively.

Para 15 of the Indian complaint submits, "The Government of India deeply regret that a serious crisis should have been reached in their relations with Pakistan. Not only is Pakistan a neighbour but, in spite of the recent separation, India and Pakistan have many ties and many common interests. India desires nothing more, earnestly than to live with her neighbour-state on terms of close and lasting friendship. Peace is to the interest of both States; indeed to the interests of the world. The Government of India's approach to the Security Council is inspired by the sincere hope that, through the prompt action of the Council, peace may be preserved."

Therefore the maintenance of 'peace and security' and the principle of 'equality' and 'right of self-determination' have a common history and shared jurisprudence. One can wait to graduate to the point of self-determination. There could be no waiting for the protection of life, honour and property of a citizen of the State of Jammu and Kashmir.

UN Security Council Resolution of 21 April 1948 (S/726) in Para 12 in addition to guaranteeing freedom of the 'press', 'speech' and 'assembly', guarantees the 'freedom of travel in the State, including freedom of lawful entry and exit'. You can't wait for the enjoyment of these rights. They are basic to change the process of life into a quality of life.

** MWA – Muslim Women's Aid – UK, an NGO without consultative status, also shares the views expressed in this statement.

Freedom of lawful entry and exit of the citizens of the State of Jammu and Kashmir as guaranteed in para 12 of UN Security Council Resolution of 21 April 1948 (S/726) was put to a test on May 2 and May 14 2012. On 2 May 2012 the dead body of a Kashmiri woman, Raja Begum 84, who had died at Holy Family Hospital in Rawalpindi, on the night of 01 May due to cardiac arrest, had to be transported back to Srinagar. She had travelled to Pakistan a couple of months back to attend the wedding ceremony of her granddaughter. The family (Kashmiri refugees in Pakistan) made desperate efforts to send the body back to Srinagar via Muzaffarabad a journey which would have taken only some hours.

Bereaved family in Rawalpindi, Pakistan had to endure a lengthy procedure, including, the registration of death with the Indian Consulate in Islamabad, securing a Death Certificate, an Embalming Certificate, police report and give passport details to the Indian High Commission in Islamabad. It took a couple of days and the family was denied permission for the transportation of the body via Muzaffarabad. Unfortunately the two competing administrations of India and Pakistan could not be persuaded either just on the humanitarian grounds or under the rights guaranteed in UN Security Council Resolution of 21 April 1948 (S/726).

The dead body of Raja Begum, 84 of Rawalpindi, Srinagar, had to be transported through a long route from Wagha border (Lahore). Her two daughters Nasreen Khalid and Nuzhat Tahir are married to Pakistan nationals whose elders had migrated from Sopore to Pakistan administered Kashmir in 1947.

On May 14, 2012 freedom of lawful entry and exit of the citizens of the State of Jammu and Kashmir faced another test when Mohammad Yasin Malik chairman Jammu and Kashmir Liberation Front (JKLF) had to cut short his visit to Pakistan and return to Srinagar to take part in the burial of his father Ghulam Qadir Malik who had died following a cardiac arrest. It would have been an expression of mature judgement and true understanding of UN resolutions on Kashmir, if the two Governments of India and Pakistan or either one of them, had allowed Yasin Malik, chairman JKLF to travel from Muzaffarabad to Srinagar to be with his family in 5 hours and be able to grieve a little more before the burial of his father. He had to travel via Thailand to Delhi and Delhi to Srinagar and was lucky to make it to the funeral.

Onions and Bananas from Pakistan enjoy a freedom of travel from Muzaffarabad to Srinagar. The failure of Yasin Malik not to be able to take the Muzaffarabad-Srinagar route on a death in the family embeds a lesson for Kashmiri leadership, academics, lawyers, journalists and the civil society as a whole. Kashmiri leaders over the years have failed to agitate the 'freedom of travel in the State, including freedom of lawful entry and exit'. Therefore, Yasin Malik and Raja Begum (visiting her granddaughters in Pakistan) who died in Holy Family Hospital in Rawalpindi on 1 May 2012 became the victims of our common negligence in not defending our rights guaranteed in UN resolutions.

Human Rights Council has to take a notice of the fact that India and Pakistan have remained guilty of a discriminatory policy in addressing their obligations towards the rights of the common people in Kashmir. Hurriyat leaders have been visiting Pakistan and have been able to travel from Srinagar to Muzaffarabad. There is hardly any evidence that they have ever desired or defended this basic human right of all people. A total silence on UN Resolution, in fact, amounts to a criminal silence on the Rights of the People. If our leaders don't have the understanding of Rights embedded in UN Resolutions and lack in the ability to defend the 'freedom of travel in the State, including freedom of lawful entry and exit', it would be a mistake to expect that they would defend the Rights of the people of Kashmir in any discussion with India and Pakistan.

JKCHR had proposed way back in 1993 that visits of divided families should be considered on the basis of East and West German model used for the divided German families at that time. Although a bus travel has been allowed between Muzaffarabad and Srinagar on a controlled basis, the sudden emergencies and humanitarian situations have not been considered by the Government of India and Government of Pakistan.

There are other 15 routes to Srinagar namely, Bharakao, Tret, Sunny Bank Murree, Dewal, Kohala, Domel, Garhi, Hatian, Chinari, Chakothi, Uri, Rampur, Baramulla, Pattan and Srinagar and 15 routes to Jammu namely, Nagrota, Jhajjar, Tikri, Udhampur, Dramthal, Kud, Batote, Ramban, Banihal, Ramsu, Upper Munda, Qazi Gund, Khannabal, Avantipora and Srinagar. There are 5 other routes namely, Havelian, Abbotabad, Mansehra, Garhi Habib-ullah and Domel as well. It is important that all these 35 routes and many others are opened for civilian travel in general and family visits in particular.

It is unfair that travel facilities between India and Pakistan are eased to enhance the constituency of people to people contact between the two countries and between the families divided in 1947 and at the same time deny the lawful entry and exit to the people of Jammu and Kashmir within their own habitat. The present regime of not allowing the citizens of the State of Jammu and Kashmir a lawful travel, is a violation of article 4 of Jammu and Kashmir Constitution (Indian administered) and violation of the trust responsibilities assumed under UNCIP Resolutions in Azad Jammu and Kashmir Constitution Act 1974 (Pakistan administered). In addition to this it is a serious violation of the right to lawful entry and exit granted in UN Security Council Resolution of 21 April 1948 (S/726). The situation needs attention.
